REPORTABLE

IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **Crl.Appeal no.340 of 2002**

% **Date of Decision : March 30, 2007**

#Sunil Kumar Sharma **Petitioner**

! Through: Mr. Sanjay Jain, Senior Advocate, Amicus Curiae for the petitioner.

Versus

$ **State (CBI)** **Respondent**

^ Through: Ms.Neelam Grover, Advocate

CORAM:-
***HON'BLE MR. JUSTICE S.N. AGGARWAL**

1.Whether reporters of Local paper may be allowed to see the judgment?
2.To be referred to the reporter or not?
3.Whether the judgment should be reported in the Digest?

S.N. AGGARWAL, J.

The appellant, before he was entrapped in a corruption case on 2.11.1994, was working as an Inspector in Delhi Police and was posted as Chowki in-charge at Police Post Sarita Vihar, New Delhi. Entrustment of and investigation of a dowry death case by him turned out to be his nemesis. He was accused of demanding and accepting illegal gratification of

Rs.4,500/= from the relatives of the deceased as consideration to help them in early recovery of dowry articles from the house of deceased's in-laws. The appellant was charged and tried by the Special Judge, Delhi for offences under Section 7 and also under Section 13(i)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and after trial was convicted and sentenced on the said charges vide impugned judgment passed by the Special Judge, Delhi on 10.4.2002. He was sentenced to rigorous imprisonment for five years with a fine of Rs.5,000/= for each of the offences for which he was convicted. Aggrieved by his conviction and sentence, the appellant has preferred this appeal.

2. The facts of the prosecution case briefly stated are as follows.

3. On 29.4.1994 Ms.Reema, daughter of PW-2 Surinder Singh, was married to Shri Mukesh, resident of Madan Pur Khadar, New Delhi and she died an unnatural death within 4-5 months of her marriage by

strangulation in the night intervening 10/11-9-1994. Her father (PW-2) got a criminal case registered against the husband of his deceased daughter, her father-in-law and two sisters-in-law vide FIR no.294/94 under Sections 498-A/304-B/34 IPC at Police Station Badar Pur. The investigation of this case was entrusted to the appellant and during investigation the deceased's father (PW-2) contacted the appellant on several dates prior to 2.11.1994, the date on which raid was held by the Central Bureau of Investigation (in short 'CBI') for trapping the appellant in the corruption case on the complaint of PW-1 Surinder Kumar, co-brother of deceased's father (PW-2).

4. As per prosecution case on 2.11.1994 the deceased's father along with his co-brother, Surinder Kumar, had contacted the appellant in the morning at Police Post Sarita Vihar, New Delhi and had requested him for the return of dowry articles of the deceased and also for proper investigation of the case. The appellant at that time was in a hurry and as such, he

asked them to contact him at Patiala House Courts, New Delhi. Accordingly, the deceased's father along with his co-brother, Surinder Kumar, contacted the appellant in Patiala House Courts, New Delhi at about 11.00 AM on 2.11.1994. At that time the appellant demanded the bribe of Rs.5,000/= from them in consideration of proper investigation and return of the dowry articles given to the deceased at the time of marriage. PW-1 Surinder Kumar, filed a written complaint dated 2.11.1994 to the Superintendent of Police, CBI (Anti-Corruption Branch), New Delhi alleging therein demand of bribe of Rs.5,000/= by the appellant from him in consideration of proper investigation and return of dowry articles. PW-1 also alleged in his complaint that the appellant had asked him to pay the said amount on the same evening of 2.11.1994 at Police Post Sarita Vihar. The complainant had further alleged in his complaint that he did not want to pay the bribe money and requested the CBI authorities for taking legal action into the matter.

On this complaint of the complainant (PW-1), case no.RC-79(A)/94-DLI was registered under Section 7 of the Prevention of Corruption Act on 2.11.1994 and its investigation was entrusted to PW-9 Shri S K Peshin, DSP, CBI (Anti-Corruption Branch, New Delhi).

5. PW-9 Shri S K Peshin after satisfying himself decided to lay a trap by arranging a trap party consisting of himself, two independent witnesses, S/Shri Tahir Hussain and Jitender Kumar Sharma, both from CGO Complex, besides other officers of the CBI. Pre-raid proceedings were conducted in the CBI office. Thereafter as per instructions given during pre-raid proceedings the complainant and shadow witness met the appellant at the Police Post Sarita Vihar in the evening on 2.11.1994. The appellant during conversation accepted the request of the complainant for reducing the bribe amount by Rs.500/=. The appellant directed the complainant to keep the bribe money in his table drawer which the complainant did accordingly. Thereafter the appellant invited them

for tea and came out from his office room. When they were going for taking tea, Constable Ashok Kumar met him, who was directed to bring the money kept in his table drawer. Constable Ashok Kumar picked up the money from the table drawer of the appellant as per his directions and by his left hand kept the same in his left side pant pocket and came out from the room of the appellant. Meanwhile, the pre-appointed signal was given by the shadow witness and thereafter the raid party led by PW-9 Shri S K Peshin, immediately rushed to the spot. The appellant on seeing the raid party ran away from the spot. However, Constable Ashok Kumar was caught red handed at the spot. He immediately disclosed that he in compliance of the directions of the appellant had picked up the money from the drawer of his table and the same was kept by him in the left pocket of his pant. The appellant was chased by the officials of the CBI and was brought to the spot. The recovery of the tainted money was made from the left side pant pocket of Constable Ashok

Kumar. The appellant as well as Constable Ashok Kumar were arrested from the spot on 2.11.1994 and post-raid proceedings were done at the spot and after the complete investigation of the case, the challan was filed against the appellant.

6. The appellant was charge-sheeted for offences under Section 7 and also under Section 13(i)(d) read with Section 13(2) of the Prevention of Corruption Act on 5.12.1995. He pleaded not guilty to the charge and was tried by the Special Judge, Delhi. The prosecution examined nine witnesses and they are PW-1 Surinder Kumar (complainant); PW-2 Surinder Singh (deceased's father); PW-3 Jitender Kumar (independent witness); PW-4 R S Gupta (the then Additional Commissioner of Police–examined to prove the sanction order); PW-5 Tahir Hussain (shadow witness); PW-6 V S Bisaria, Senior Scientific Officer; PW-7 Constable Ashok Kumar [the person from whom bribe money was recovered]; PW-8 Shri Rajiv Kumar Chadha DSP, CBI (2nd I.O. of the case); and PW-9 Shri S K Peshin, DSP, CBI

(the initial I.O. of the case).

7. The statement of the appellant was recorded under Section 313 Cr.P.C. He also examined two witnesses in his defence and they are DW-1 Constable Vikram Singh and DW-2 Const. Ratan Lal.

8. At the conclusion of the trial and upon consideration of the evidence adduced by the parties, the court below found the appellant guilty of the offences for which he was charged vide impugned judgment and order dated 10.4.2002. Aggrieved by the findings of the court below, the appellant has preferred this appeal.

9. Mr.Sanjay Jain, learned senior counsel, was appointed as Amicus Curiae to assist the court on behalf of the appellant whereas Ms.Neelam Grover, learned Advocate, appeared on behalf of the CBI/respondent. Learned Senior Counsel has also filed his written submissions which have been carefully gone through by me. I have also gone through the entire record of the trial court as well as the impugned

judgment with utmost care.

10. The learned Senior Counsel for the appellant had argued that there are fundamental and other errors in the impugned judgment. He had referred to the testimony of the witnesses on record and by reference to the same, he had argued that there was absolutely no evidence of demand or acceptance of illegal gratification by the appellant and in the absence of such evidence, the court below had committed an error in shifting the onus of proof to explain the charges slapped on him. The evidence pointed out by the learned counsel and the contentions raised thereon during the course of arguments shall be dealt with at appropriate places hereinafter.

11. On the other hand, Ms.Neelam Grover, learned Advocate for the CBI/respondent, had argued in support of the reasonings for conviction contained in the impugned judgment. She had submitted that though the independent witnesses have turned hostile but their testimony to the extent they have supported the

prosecution by their admission of various acts may be looked into as corroborative evidence to support the testimony of the complainant (PW-1) and that of the trap laying Officer (PW-9). She also relied upon the conduct of the appellant of his running away on seeing the raid party and this, according to her, proves the guilt of the appellant of accepting the illegal gratification from the relatives of deceased Reema. Ms.Grover relied upon a judgment of the Supreme Court in ***State of UP V/s. Zakaullah 1998 SCC (Cri) 456*** in support of her contentions that conviction can be based only on the statement of trap laying Officer *de hors* other evidence on record. I have given my anxious thought to the rival arguments advanced by the learned counsel for the parties.

12. All cases of corruption have two important aspects and they are (i) demand and (ii) acceptance. Unless demand and acceptance of illegal gratification by the public servant charged with under the Prevention of Corruption Act are proved by the

prosecution beyond doubt, the presumption provided for in Section 20 of the Act cannot be drawn. Three cardinal principles of criminal jurisprudence are well settled and they are as follows :-

> i) that the onus lies affirmatively on the prosecution to prove its case beyond reasonable doubt and it cannot derive any benefit from weakness or falsity of the defence version while proving its case;
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> ii) that in a criminal trial the accused must be presumed to be innocent unless he is proved to be guilty; and
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> iii) that the onus of the prosecution shifts.

13. The Evidence Act also does not contemplate that the accused should prove his case with the same strictness and rigour as the prosecution is required to prove a criminal charge. In fact, from the cardinal principles referred to above, it follows that it is sufficient if the accused is able to prove his case by the standard of preponderance of probabilities as envisaged by Section 5 of the Evidence Act as a result of which he succeeds not because he proves his case to the hilt but because probability of his

version throws doubt on the prosecution case.

14. The learned Senior Counsel, who appeared for the appellant, had challenged to the validity of the sanction order passed by the sanctioning authority PW-4, Shri R S Gupta, then Addl. Commissioner of Police, Delhi. He urged that there was complete non-application of mind on the part of the sanctioning authority in granting the sanction for prosecution. In support of his said contention, he placed reliance upon three judgments viz (i) ***Ganesh Prasad Shukla V/s. State of Bihar*** ***2000 Crl.L.J. 4841***; *(ii)* ***Har Bharosey V/s. State of UP*** ***1988 Crl.L.J. 1122***; *and (iii)* ***Mohd.Iqbal Ahmed V/s. State of AP*** ***AIR 1979 SC 677***. These judgments on the point of sanction are of no consequence to the contention relating to validity of sanction raised on behalf of the appellant. PW-4 Shri R S Gupta, who at the relevant time was the competent authority to sanction the prosecution, has testified in his testimony during the trial that he had granted sanction for prosecution of the appellant after

consideration of all the material placed before him. On perusal of sanction order, Exhibit PW-4/A, it cannot be said that the said order was passed by the sanctioning authority without application of mind as alleged on behalf of the appellant. Hence, the contention of the appellant relating to validity of sanction is found to be without any substance and is, therefore, rejected.

15. Now adverting to the merits of the case, it may be noticed at the outset that the appellant being the Investigating Officer of a dowry death case has heavily relied upon the fact that the relatives of the deceased in the said case had been contacting and threatening him prior to the date of raid held on 2.11.1994 and that he had recorded such threats in his case diary for 25.10.1995 and 29/3.10.1994 (Exhibits DW-1/A, DW-1/B and DW-2/A respectively). The appellant has also submitted in his defence that the father of the deceased (PW-2) had lodged a complaint against him prior to the date of raid in the Vigilance

Department on 19.9.1994 pursuant to which a departmental enquiry was held against him in which after enquiry he was exonerated.

16. The learned Senior Counsel for the appellant had vehemently argued that since the relatives of the deceased had an animosity with the appellant as they were not satisfied with the investigation of dowry death case done by the appellant, they had conceived a plan in connivance with their another relative Mool Chand, a Constable in Delhi Police to falsely implicate the appellant in a corruption case and to cause harm to him.

17. It was further contended by the learned Senior Counsel that neither there was any demand by the appellant nor the bribe money was ever accepted by him from any of the relatives of the deceased. According to him, Constable Mool Chand ('Phoopha' of the deceased) and deceased's father, Surinder Singh (PW-2) were also the members of the raiding party and were present at the time of raid on 2.11.1994 but the

prosecution had deliberately withheld Constable Mool Chand from examining him as witness in the case. The contention was that had Constable Mool Chand been examined then he would have unfolded the real truth because it was this man who had kept the money in the drawer at the time of raid.

18. In order to appreciate the above contentions advanced on behalf of the appellant, it would be necessary to refer to the explanation given by the appellant in his statement under Section 313 Cr.P.C., where he has given an explanation why he was involved in the present case. The relevant portion of his statement under Section 313 Cr.P.C. is extracted below :-

> ".....In November 1994 I was investigating a criminal dowry death case bearing FIR no.294/94, PS Badarpur. In this case, Smt.Reema, d/o Surinder Singh PW was the deceased. The case was registered against Mukesh and Ajit Singh, Kumari Bala and Smt.Manju (the husband, father in law and sisters in laws of the deceased). I had arrested Mukesh and Ajit Singh, However, the two ladies, Kumari Bala and Smt.Manju had applied for anticipatory bail. They were granted bail by the court of Sessions on

6.10.94, although I had opposed the bail application. Grant of anticipatory bail to the ladies annoyed the family members of the deceased, including the complainant and other family members of the deceased. Those persons carried impression that bail was granted by the court because of the weak opposition though it was not the fact.

Surinder Singh, the father of the deceased had complained against me to the Vigilance Department and the DCP, South Distt. Both the witnesses had appeared in the inquiry in my presence and their complaint was found without any substance and the same was filed.

Surinder Singh, father of the deceased PW went to the court of ACMM and made allegations against me that I was colluding with the accused persons of dowry death case and the Hon'ble Court recorded the statement of Surinder Singh and his family members.

One Mool Chand Ct., of Delhi Police is related and known person to Surinder Singh and Surinder Kumar, PWs. Mool Chand is not an authorised person. There has been many complaints against his integrity and he is facing departmental inquiry. Criminal cases stands registered against him. He was the person behind the screen to involve me in this case.

On 29.9.1994 the said Mool Chand Const., Surinder Singh and Surinder Kumar came to the Police Post and had threatened me that if I failed to show the return of the dowry articles, they will not allow me to remain in service. I recorded the threat in the case diary dated 29.10.1994. Such threats were

> also extended to me on 25.10.1994 and I recorded the said threat in my case diary on 25.10.1994. I also recorded the threats in daily diary dated 29/30.10.1994 of PP Sarita Vihar....”

19. The above statement of the appellant clearly indicates that prior to the date raid was held on 2.11.1994, the relatives of the deceased had extended threats to the appellant which was recorded by him in his case dairy of 25.10.1994 and 29/30.10.1994. The case diaries containing the threats have been proved by DW-1 and DW-2 as documents Exhibit DW-1/A, DW-1/B and DW-2/A.

20. The learned court below has taken note of the plea of the appellant regarding the threats extended to him by the relatives of deceased recorded in case diary Exhibits DW-1/A, DW-1/B and DW-2/A and in this regard it would be necessary to quote the observations and findings of the court below on this aspect contained in paras 77, 78 and 98 to 102 of the impugned judgment and the same are reproduced hereinbelow :-

"77 PW-1 conceded during cross examination that he accompanied by PW-2 had visited and met the accused at PP on 29-30/09/94. He however, denied that Const. Mool Chand was with him on the said date. He further denied the suggestion that he (PW2) and Const. Mool Chand had extended threats to the accused on the said dates. He further denied the suggestion that similar threat was given by him and others to the accused on 25.10.1994 and 29.10.1994. He stated that he would not know if accused had made any entry with regard to such threats in the case diary or DD of P.S. It was suggested to him that he was bearing grudge and ill will against the accused and, therefore, had lodged false complaint against him. He denied the said suggestion categorically. Similar suggestions about threats extended on 29-30.09.94, 25.10.94 and 29.10.94 have also been given to PW-2, who also denied the same, also showing ignorance if any entry in this regard had been made by the accused in the case diary or general diary.

78 Accused sought to prove the aforesaid entries in the case diary and daily diary through DW-1 and DW-2. DW-1 Const. Vikram Singh Proved the case diary no. 20 & 21 Ex. DW1/A and Ex. DW1/B pertaining to the dowry death case referred to earlier. DW proved DD No. 8 dated 29-30/09/94 vide copy Ex. DW2/A in the hand of Const. Dhani Ram. Ex. DW1/A is the copy of the case diary dated 25.10.94 while Ex. DW1/B is the copy of case diary of 29.10.94, both purported to be in the hand of the accused. In the case diary Ex. DW1/A the accused, as I.O. of the dowry death case, is shown to have recorded inter alia that outside the Court, Const. Mool

Chand and some of his relatives had demanded early restoration of dowry or else they would take suitable action against him Ex. DW1/B. Similarly inter alia also refers to Const. Mool Chand and his relative Surinder Singh (PW-2) having met again outside the Court and having threatened to make a complaint against him before superior officers. In this case diary he also mentioned that the aforesaid persons had gone away extending threats that they would see him and that he would face difficulty in his service.

98 I am not prepared to draw any motive for false implication even from the daily diary entry Ex. DW-2/A, which essentially pertains to report recorded at the instance of the accused as to what had transpired in the Court on 29.10.94. Said entry no where alleges any threats having been extended.

99 Case diaries Ex. DW-1/A & B on the other hand however, perse appears to be fabricated assumbly after involvement in this case. Interestingly, the date and place of occurrence mentioned in the said case diary is described as 10.11.94, even though the case diaries purport to have been recorded on 25.10.94 and 29.10.94. The case diary, even otherwise, was a record within the control of the accused. It is quite apparent that he fabricated these case diaries so as to create ground of defence in the case in hand. Assuming such threats had been extended as are fount reflected in these case diaries, there is no explanation whatsoever on the part of the accused as to what steps did he take to ensure that the threats were not translated into action.

100 It is inconceivable that a police officer of the rank of Inspector would sit quiet even on hearing threats from a police official of as low a rank as a Constable. If such incidents as alleged by the accused actually happened they amounted to serious misconduct, even penal offences, on the part amongst others, of constable Mool Chand. There was nothing stopping the accused from initiating action against him under the law, or through the department by way of reports to his superiors. There is nothing on record to indicate any such initiative on the part of the accused.

101 Noticeably, the accused has himself not entered the witness box to vouch safe the acts pertaining to alleged threats received by him on 25.10.94 and 29.10.94. The mere reference to the case diaries through DW1 cannot result in the contents thereof being held even remotely being proved. The fact that accused avoided entering the witness box to depose to such effect rather shows he would not take the risk of facing inconvenient questions in the nature mentioned above, rendering the defence plea further suspect.

102 All said and done, I am of the considered opinion that the theory of threats by the Complainant side has been invented on the basis of record that has been fabricated. In these circumstances Chander Bhan Vs. Stated 73 (1998) Delhi Law Times, 318 (as relied upon by defence) is distinguishable on facts."

21. A reading of the findings of the court below on the aspect of case diary (Exhibits DW-1/A, DW-1/B

and DW-2/A) would clearly indicate an erroneous approach on the part of the trial court in shifting the onus of proof from prosecution to the accused. I am of the view that the learned court below ought to have considered the facts of the case in its entirety while adverting to the controversy as to whether or not the appellant was guilty of committing the offences complained of. The Apex Court in the case of ***Rabindra Kumar Dey V/s. State of Orissa (1976) 4 SCC 233*** had observed as under :-

> "It is true that under Section 105 of the Evidence Act the onus of proving exceptions mentioned in the Indian Penal Code lies on the accused, but this section does not at all indicate the nature and standard of poof required. The Evidence Act does not contemplate that the accused should prove his case with the same strictness and rigour as the Prosecution is required to prove a criminal charge. In fact, from the cardinal principles referred to above, it follows that, it is sufficient if the accused is able to prove his case by the standard of preponderance of probabilities as envisaged by Section 5 of the Evidence Act as a result of which he succeeds not because he proves his case to the hilt, but because probability of the version given by him throws doubt on the prosecution case and, therefore, the prosecution cannot be said to have

> established the charge beyond reasonable doubt. In other words, the mode of proof by standard of benefit of doubt, is not applicable to the accused, where he is called upon to prove his case or to prove the exceptions of the Indian Penal Code on which he seeks to rely. It is sufficient for the defence to give a version which competes in probability with the prosecution version, for that would be sufficient to throw suspicion on the prosecution case entailing its rejection by the court. This aspect is no longer *res integra* but is concluded by several authorities of this Court."

22. The learned court below was obliged to consider and weigh the defence of the appellant in the light of the above judgment of the Apex Court on the aspect of standard of proof required from the accused to prove his defence. In my view, the learned trial court went wrong in drawing an adverse presumption and in not believing the entries contained in the case diary, Exhibits DW-1/A, DW-1/B and DW-2/A, on the premise that the appellant himself did not enter the witness box. Such an approach was wholly erroneous in view of the admission made by the relatives of the deceased (PW-1 and PW-2) in the course of their testimony in the trial that they had contacted the

appellant on several dates prior to the date raid was held on 2.11.1994. Further more, the view taken by the learned trial court that the entries contained in the case diaries, Exhibits DW-1/A, DW-1/B and DW-2/A, are fabricated documents only because the date of 10.11.1994 is mentioned there in the column of date of incident. It seems that the learned court below has mistaken itself in taking the said date for construing the case diaries as fabricated documents. This date of 10.11.194 mentioned in the above mentioned case diaries actually relates to the date of incident of dowry death case, which took place during the intervening night of 10/11.9.1994 and it seems that the month of November instead of September mentioned in the said case diaries was on account of pen-slip. The entries contained in the above case diaries have been proved in the testimony of defence witnesses as Exhibits DW-1/A, DW-1/B and DW-2/A and there is nothing in their cross examination to have a slightest doubt on their veracity. Hence, I am of the view that

the learned court below has wrongly ignored the plea of past animosity attempted to be proved by the appellant during trial.

23. PW-1 Surinder Kumar, is the '*Mausa*' of the deceased and PW-2 Surinder Singh, is the deceased's father. Both these witnesses have candidly admitted in their evidence during trial that they along with their another relative Constable Mool Chand had contacted the appellant in relation to progress of the investigation on several dates prior to the date raid was held on 2.11.1994. PW-1 and PW-2 have further admitted in their evidence that they had lodged a complaint against the appellant on 19.9.1994 in the Vigilance Department and that they had also made complaints against him to the Commissioner of Police as well as to the ACMM as they were not satisfied with the progress of investigation in the dowry death case relating to unnatural death of daughter of PW-2 Surinder Singh. The complaint dated 19.9.1994 made by the deceased's father (PW-2) against the appellant in

the Vigilance Department of Delhi Police through Commissioner of Police is Exhibit as PW-2/D-2 and a perusal of the said complaint reveals that deceased's father had made a complaint against the appellant even about his integrity also. This complaint admittedly was made before the date of raid i.e. 2.11.1994.

24. On the face of the above admissions made by PW-1 and PW-2 in their testimony before the court below in the present case and particularly, in view of the written complaint made by PW-2, Exhibit PW-2/D-2, it does not stand to reason how the court below could have doubted the plea of the appellant regarding animosity between the complainant and the appellant prior to the date of raid. Since the appellant has proved through cogent evidence that the relatives of the deceased were entertaining hostility against him prior to the date of raid, it was the bounden duty of the court below to have scanned the entire evidence placed before it carefully giving the same weightage to the defence plea as given to the prosecution

witnesses. In this backdrop the plea of the appellant about his false implication could not have been completely ruled out till it was proved that he had made a demand and accepted illegal gratification from the complainant to show some favour to him in dowry death case. As per case of the prosecution, the bribe was demanded by the appellant from PW-1 and PW-2 as consideration for return of dowry articles of the deceased. Both PW-1 and PW-2 have admitted in their respective testimony that they never made any demand for return of dowry articles prior to the date of raid either in the FIR or by way of an application to any other authority. As such, the consideration for which bribe was allegedly demanded by the appellant was completely non-existent. It is difficult to believe that a person would demand bribe from his tormentors, particularly, when he knew full well that they were after his blood prior to the date of alleged demand. Such a thing is against normal human behaviour which could not have been lost sight of by

the trial court while analysing the evidence of the prosecution witnesses. It was the duty of the court below to have seen whether the essential pre-requisites of a corruption case i.e. demand and acceptance have been proved beyond doubt or not but this duty, in my view, seems to have not been discharged by the learned trial court as per settled legal norms for proving a criminal case of corruption.

25. It is revealed from the record that the independent public witnesses associated with the raid have not supported the prosecution version. These public witnesses are PW-3 Jitender Kumar and PW-5 Tahir Hussain. They both were declared hostile. These public witnesses had nothing to do either with the prosecution case or with the defence of the appellant. If their testimony is analyzed in the right perspective, it may be seen that both of these witnesses have given a version that would support the defence plea of the appellant instead of supporting the prosecution version. The observation of the court

below that these public witnesses were won over by the appellant does not seem to be correct in view of testimony of other witnesses on record. PW-7 Constable Ashok Kumar was caught red handed during raid and as per the prosecution case, the tainted money was allegedly recovered from his possession. There is no cogent evidence on record to show recovery of tainted money from PW-7 Constable Ashok Kumar. Admittedly as per case of the prosecution, PW-7 Constable Ashok Kumar was arrested from the spot on 02.11.94 and he was bailed out along with the appellant after 3-4 days of his arrest. Though PW-7 Constable Ashok Kumar was initially a suspect but later on the prosecution chose to make him its witness instead of putting him in the column of accused persons. The prosecution has not given any explanation why PW-7 Constable Ashok Kumar from whom tainted money was allegedly recovered was not made a accused in the case. Be that as it may PW-7 Constable Ashok Kumar as a prosecution witness has not at all supported the

prosecution version in his testimony. He was also declared hostile and was cross examined by the learned Prosecutor. In his cross-examination except giving suggestions to him which were picked from his statement under Section 161 Cr. P.C., no effort was made by the prosecution to dig out the truth from him or to know how the tainted money came in his possession. PW-7 Constable Ashok Kumar has clearly stated in his testimony during trial that he was not instructed by the appellant to remove the tainted money from his table drawer. In fact this witness has completely denied recovery of tainted money from his possession. As such it may be seen that three important witnesses of the prosecution namely PW-3, PW-5 & PW-7 were hostile to its case.

26. The tainted money was admittedly not recovered during raid from the possession of the appellant. It is not the case of the prosecution that the bribe money was recovered by it from the appellant. PW-9 S.K. Peshin who was the trap laying

officer was admittedly neither a witness to the demand of bribe allegedly made by the appellant from the relatives of the deceased at Patiala House Courts on 02.11.94 or to the acceptance of the bribe money by him. PW-9 in his testimony during trial has only proved the pre-raid proceedings and the post-raid proceedings. As per his testimony, he along with his other members of the raid party rushed towards the appellant on receiving pre-appointed signal given by the shadow witness PW-5 Tahir Hussain. PW-9 has further deposed that he was told by the complainant (PW-1) and the shadow witness PW-5 Tahir Hussain that they had heard the appellant instructing PW-7 Constable Ashok Kumar to remove the tainted money from his table drawer. This part of the testimony of PW-9 is hit by rule of hear-say and is therefore inadmissible in evidence. Further more, the shadow witness PW-5 Tahir Hussain has not supported the version of PW-9 S.K. Peshin that he had told him having heard the appellant giving instructions to PW-7

Constable Ashok Kumar to remove the tainted money from his table drawer. Thus, neither demand nor acceptance of illegal gratification is proved from the testimony of trap laying officer (PW-9).

27. Now we are left only with the testimony of PW-1 & PW-2 who both are the relatives of the deceased. PW-1 Surinder Kumar is the Mausa of the deceased whereas PW-2 Surinder Singh is the deceased's father. They are both interested witnesses in the sense that their paramount interest lied in the success of corruption case initiated by them against the appellant. Though PW-1 & PW-2 are interested witnesses but their testimony cannot be discredited merely on the ground that they are interested witnesses. In case the testimony of interested witnesses is credit worthy, the conviction can still be based on their uncorroborated testimony.

28. In ***Jaswant Singh V/s.State of Punjab*** **Air 1973 SC 707** it was held by the Supreme Court that in a bribery case the complainant is an interested witness

and his evidence must be considered with great caution and it can be accepted when this is corroborated by other evidence adduced by the prosecution.

29. In view of the latest trend of the Supreme Court in its judgments particularly in ***State of UP V/s. Zakaullah***'s case (supra), the complainant's evidence does not require any corroboration and the court can act upon the testimony of the complainant provided the same is trustworthy to be acted upon.

30. In the light of the above judgments of the Supreme Court, what we have now to see is whether the testimony of PW-1 & PW-2 being the relatives of the deceased is credit-worthy or not and if the same is found to be credit-worthy, whether it proves the essential ingredients of offence of corruption for which the appellant had faced trial.

31. PW-2 Surinder Singh is the father of the deceased Reema. The contention of the learned senior counsel who appeared on behalf of the appellant was that this witness along with his other relative

Constable Mool Chand was present throughout the raid and it was contended that even the tainted money was kept in the drawer of the appellant by Constable Mool Chand but for reasons best known to the prosecution, their presence during raid was concealed from the Court. In order to establish this plea, the learned senior counsel had referred to the testimony of PW-2 Surinder Singh and had also relied upon the statement of this witness Ex. DC recorded during departmental proceedings held against the appellant on the complaint of the deceased's father. It was contended that PW-2 Surinder Singh in his testimony before the Court has testified that he was not present at the time of raid and had left for his village from the office of his co-brother Surinder Kumar at Maharani Bagh, New Delhi. It was pointed out that this stand taken by PW-2 during trial of the present case is in complete contradiction to the stand taken by him in his statement Ex. DC during departmental proceedings wherein he has stated that he was very much present

during raid and also that the bribe money was accepted by the appellant in his presence. The factual aspect in regard to the above pointed out during arguments cannot be said to be without substance. What learned senior counsel had contended on the above factual aspect is in fact born out from the record of this case. It seems that the above material contradiction regarding presence or absence of deceased's father during raid was completely overlooked by the court below. The fact that the deceased's father (PW-2) was present with the raiding party at the time of raid is also born out by his answer to question No. 9 during departmental proceedings and the same is extracted below:-

> "Q.no.9. Whether any formalities regarding preparation of papers was done at the Police Post before proceeding to the CBI office?
>
> Ans. It was not done at least in my presence. I was made to sign certain papers in the CBI office."

32. The above answer given by the deceased's father to question No. 9 during departmental proceedings clearly implies that though he was present

during raid but the formalities regarding the preparation of papers were completed in the CBI Office and not at the spot. In case the deceased's father was present during raid, why the prosecution withheld his presence creates a serious doubt on the story of the prosecution. Even the presence of Constable Mool Chand who was also a close relative of the deceased has also been established through the testimony of PW-3, PW-5 & PW-7. The relevant portions of their testimony in their cross- examination are extracted below :-

> "PW3, Jitender Kumar, stated as follows:-
>
> Treated notes were thereafter handed over to the Mool Chand or complainant Surinder Kumar. I am not sure about it. Complainant was directed to hand over the tainted notes to the accused in the event of specific demand. Mool Chand was directed to act as a shadow witness and tried to see the transaction as well as hear the conversation. He was further directed to give signal to the raiding party by placing his hands over his hairs in the event of acceptance of bribe by accused..... We left CBI office at about 6:00pm. And proceeded towards Police Post Sarita Vihar. Official vehicles were parked at a distance of half kms. From the Police Post and we all got down. Thereafter Surinder Kumar, Tahir Hussain, Mool Chand and father of the girl proceeded towards the Police Post

Sarita Vihar. We three remaining members of the raiding party took position outside the Police Post. 20/25 minutes later, Mool Chand came out of the Police Post and gave signal by placing his hand over his head..... It is incorrect to suggest that at time no person by the name of Mool Chand was present in the office of Shri S.K. Peshin..... I know Mool Chand because one person during the pre-raid proceedings was introduced to me as Mool Chand. Said Mool Chand of medium built. It is incorrect to suggest that no person with the name of Mool Chand was present in the CBI office nor any such person was introduced to me..... I had conversation with Mool Chand on the date of raid. During the conversation I came to know that said Mool Chand was Constable in Delhi Police and that he was related to complainant Surinder Kumar.

PW-5, Tahir Hussain in this regard as follows:-

On 2.11.94 I visited CBI office along with Jitender Kumar, UDC at around 4:00 PM pr 4:30 pm on the instructions of my senior officer. There I met some CBI officials. Complainant was already present there and he have his name as Mool Chand..... Said GC notes were handed over to the complainant Mool Chand..... It is incorrect Mool Chand told me in the way to PP Sarita Vihar that he is the Constable of Delhi Police. Mool Chand and the complainant had gone into the room of accused S.K. Sharma.

PW-7, Ashok Kumar, stated as under:-

On this I reached at that spot and

intervened. Meanwhile 2 or 3 persons came there in a vehicle. Thereafter, Mool Chand constable of the same PP told those persons that I was a favourite of the accused."

33. A bare look to the above testimony of PW-3, PW-5 & PW-7 would show presence of Constable Mool Chand at the time of raid beyond doubt. As per testimony of PW-5 Tahir Hussain, it was Constable Mool Chand who had kept the tainted money in the drawer of the appellant on the date of raid. Admittedly the drawer of the table in which the tainted money was kept was unlocked. As presence of Constable Mool Chand during raid is established beyond doubt, then why the prosecution withheld him by not making him a witness to the case. I feel that had Constable Mool Chand been examined in the matter, he might have spilled the beans. The non-examination of Constable Mool Chand during trial raises a serious doubt about the authenticity of the prosecution version against the appellant. Be that as it may, the testimony of deceased's father (PW-2) is of no consequence or help to the prosecution to prove the charges in question

against the appellant.

34. We are now left only with the testimony of the complainant (PW-1). On giving a close look to the testimony of this witness, he does not appear to be a trustworthy witness and conviction cannot be based solely on his testimony. Though PW-1 Surinder Kumar has admitted in his cross-examination that the statement Ex. DC of his co-brother PW-2 Surinder Singh was recorded during departmental proceedings against the appellant in his presence in which PW-2 had taken a stand that he was present during raid but still PW-1 has testified during trial that neither Constable Mool Chand nor his co-brother Surinder Singh was present during raid. PW-1 has not denied that the drawer of the table in which tainted money was kept was unlocked. The prosecution has not proved that it was not possible for a third person to go and keep the tainted money in the unlocked drawer. The testimony of PW-1 Surinder Kumar during trial that the appellant had taken him along with the shadow witness for

discussion in the inner room attached to his room and there the appellant had agreed to reduce the bribe money from Rs. 5,000/- to Rs. 4,500/- appears to be far from truth. The site plan Ex.PW-3/A does not show existence of inner room attached to the room of the appellant. The absence of inner room in the site plan Ex.PW-3/A completely belies the testimony of PW-1 about any such conversation relating to reduction of the amount of bribe money. It shall further be significant to mention that the deceased's father (PW-2) has testified in his chief that he did not carry the required bribe money at the time it was demanded by the appellant at Patiala House Courts on 02.11.94. In his cross-examination, he took a U-turn on this aspect and stated that he carried Rs. 5,000/- with him when he left his house for meeting the appellant on 02.11.94. How the deceased's father would know that the appellant would make a demand only of Rs. 5,000/- which he carried with him while he left the home in the morning. This indicate a pre-conceived plan in the

minds of PW-1 & PW-2 to implicate the appellant in a false case of corruption for which threats have already been extended by them to him much prior to the date of raid. This aspect of the matter also seems to has been ignored by the court below and creates a serious doubt on the prosecution version against the appellant.

35. The court below has placed heavy reliance on the conduct of the appellant in his running away from the spot on seeing the raid party. As per testimony of trap laying officer (PW-9) S.K. Peshin, Inspector R.S. Tokas, Inspector R V S Lohmar, Inspector S R Singh, Inspector D M Sharma and Sub-Inspector Rai Singh were also the members of the raid party but the site plan Ex. PW-3/A does not show the presence of Inspector R.S. Tokas being present there at the time of raid. The site plan Ex. PW-3/A also does not show the presence of deceased's father or of Constable Mool Chand at the time of raid, though it has been established from the record that they were also

present there at the time of raid. The absence of deceased's father, Constable Mool Chand and of Inspector R.S. Tokas in the site plan creates a doubt about its genuineness. Further more, as per prosecution case and also as per testimony of the trap laying officer, Inspector R V S Lohmar, Inspector S R Singh, Inspector D M Sharma and Sub-Inspector Rai Singh were all instrumental in chasing and apprehending the appellant while he attempted to run away on seeing the raiding party. The prosecution has not examined Inspector R S Lohmar, Inspector S R Singh, Inspector D M Sharma or Sub-Inspector Rai Singh who according to it had apprehended the appellant while he was attempting to run away from the spot. Non-examination of these persons creates a serious holes on the prosecution version in relation to above conduct of the appellant.

36. In view of the above discussion, I have no hesitation in holding that the prosecution has miserably failed to prove the guilt of the appellant

beyond doubt. It is disquieting that the learned court below has chosen to record conviction against the appellant on totally untenable grounds by overlooking the salient features of the case discussed hereinabove. In my view, the impugned judgment cannot stand the test of judicial scrutiny and is, therefore, set aside.

31. For the foregoing reasons, this appeal is allowed. The conviction and sentence of the appellant is hereby set aside. As the appellant is on bail, his bail bonds are discharged. There will be no order as to costs.

March 30, 2007 **S.N. AGGARWAL**
'ss/a' **(JUDGE)**